

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Appeal to the Court of  
Appeal of the Democratic Socialist Republic of  
Sri Lanka.

C.A. Appeal No. 216/2000 (F)  
D.C. Colombo Case No. 32888/T

Edwin Leopold Gunawardane (Deceased),  
No. 13/4, De Seram Road,  
Dehiwala,  
Mount Lavinia.  
PETITIONER

Lester Clarence Gunawardane,  
No. 47/8, St. Peter Road,  
Mount Lavinia.  
Substituted PETITIONER

-Vs-

1. Aswini Gunawardane,  
8610, West, 25<sup>th</sup> Street.  
St. Lewis Road, MN 55426,  
U.S.A.
  2. Nevanka Gunawardane Liyanapathiranage  
1895, Brush Avenue,  
St. Paul Minnesota,  
55119, U.S.A.
- RESPONDENTS



AND NOW BETWEEN

2. Nevanka Gunawardane Liyanapathiranage

1895, Brush Avenue,

St. Paul Minnesota,

55119, U.S.A.

2<sup>ND</sup> RESPONDENT - APPELLANT

-Vs-

Lester Clarence Gunawardane,

No. 47/8, Saint Peter Road,

Mount Lavinia.

Substituted PETITIONER - RESPONDENT

1. Aswini Gunawardane,

8610, West, 25<sup>th</sup> Street.

St. Lewis Road, MN 55426,

U.S.A.

1<sup>ST</sup> RESPONDENT - RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Harsha Soza, P.C with Upendra  
Walgampaya for 2<sup>nd</sup> Respondent-Appellant.  
Romes de Silva, P.C with Saumya  
Amarasekera for Substituted Petitioner-  
Respondent.  
Hemathilaka Madukanda for 1<sup>st</sup> Respondent-  
Appellant.



Decided on :

01.08.2017

A.H.M.D. NAWAZ, J.

The question that arises for interpretation in the case is whether, in the computation of the time period of sixty days within which a petition of appeal must be presented from the date of the judgment or decree, the date on which the judgment was pronounced should be included or excluded. The argument of the Respondents is that the date on which the judgment was pronounced should be included, whereas the 2<sup>nd</sup> Respondent-Appellant contends that the date of delivery of the judgment must be excluded.

In fact there is explicit provision for exclusions in the provision dealing with a notice of appeal, but such exclusions are not found in regard to the provisions dealing with a petition of appeal. The relevant provisions could now be contrasted.

**Time limit for filing a notice of appeal - Section 754(4) of the Civil Procedure Code:**

*“The notice of appeal shall be presented to the court of first instance for this purpose by the party appellant or his registered attorney within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays, and the court to which the notice is so presented shall receive it and deal with it as hereinafter provided. If such conditions are not fulfilled, the court shall refuse to receive it.”*

Thus Section 745(4) is quite specific that in the computation of fourteen days specified in the provision, the day of the delivery of the judgment, the date on which the petition is presented and Sundays and public holidays should be excluded.

Such express exclusions are not found in Section 755(3) of the Civil Procedure Code which imposes a time limit of sixty days for a petition of appeal to be filed.



**Time limit for presenting a petition of appeal - Section 755(3) of the Civil Procedure Code:**

*“Every Appellant shall within sixty days from the date of the judgment or decree appealed against, present to the original court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars require by section 758, which shall be signed by the appellant or his registered attorney. Such petition of appeal shall be exempt from stamp duty:*

*Provided that, if such petition is not presented to the original court within sixty days from the date of the judgment or decree appealed against, the court shall refuse to receive the appeal.”*

The question is what effect the phrase “*within sixty days from the date of the judgment or decree appealed against*” entails namely whether the date of the judgment must be included or excluded.

In my view the issue could be resolved by recourse to Section 14(a) of the Interpretation Ordinance, which in its preamble declares itself to be “*An Ordinance for defining the meaning of certain terms and for shortening the language used in enactments and other written cases and for other purposes*”.

This particular provision - Section 14(a) lays down:-

*“In all enactments for the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word ‘from’”*

It is crystal clear that Section 755(3) of the Civil Procedure Code, when it enacts “every appellant shall within sixty days from the date of the judgment or decree appealed against” refers to a series of days or a period of time covering sixty days. The fact that no express exclusions have been explicitly provided for in the period of sixty days shows that this is a period of sixty days-a series in an unbroken period. But when does the starting terminal of the series commence? Section 14(a) of the Interpretation Ordinance lays down that in a series of days or a period of time,



beginning from a particular day, the 1<sup>st</sup> day in the series has to be excluded. This general rule is based on the meaning of “from” in Section 14(a) of the Interpretation Ordinance. Thus it follows that the date of the delivery of judgment has to be excluded in the computation of sixty days which is specified in Section 755(3) of the Civil Procedure Code.

I am fortified by a series of judgments which incline towards the exclusion of the day of delivery of the judgment in the computation of sixty days.

Counsel for the 2<sup>nd</sup> Respondent-Appellant has cited the precedent of *Jinadasa v. Hemamali and others* (2006) 2 SRI. LR 300 - a special reference by the President of the Court of Appeal to a three judge bench wherein Wimalachandra J. held that the date of pronouncement of the judgment must be excluded from the computation of sixty days.

Wimalachandra J. also referred to the case of *Sivapadasundaram v. Pathmanadan and others* (2004) Bar Association Law Journal 189 where this Court had previously settled the issue thus:-

*“Our Courts in many instances have considered the provisions of both sections mentioned above (namely Sections 754(4) and 755(3) of the CPC) and interpreted the words “from the date of the judgment” contained in Section 755(3) of the Civil Procedure Code. When computing sixty days from the date of the judgment, the date of pronouncement of the judgment should be excluded”*

If Section 14(a) of the Interpretation Ordinance has enacted that it is sufficient to use the word “from” to exclude the first day where a series of days or a period of time is fixed for any act to be done, the starting terminal for the computation of sixty days must begin on the next day following the date of pronouncement of the judgment and when the Court of Appeal commented in *Wickremasinghe v. de Silva* (1978-79) 3 SRI. LR 65 that the provisions of Section 755(3) of the Civil Procedure Code which require the petition of appeal to be filed within sixty days from the date of the



judgment are mandatory, it is crystal clear that the Appellant must have the amplitude of the full sixty days period excluding the date of delivery of the judgment.

From the above reasoning the position with regard to the time limits could be summed up. As regards a notice of appeal, Section 754(4) provides for the following days to be excluded in computing the fourteen days;

- i. the day on which the judgment from which the appeal is made is pronounced;
- ii. intervening Sundays and public holidays;
- iii. the day on which the notice of appeal is presented.

The effect of the express exclusions in Section 754(3) of the Civil Procedure Code is that no further exclusions could be implied-*expressio unius est exclusio alterius*.

In regard to Section 755(3) of the Civil Procedure Code which deals with a petition of appeal, the exclusion of the day of the judgment in the computation of sixty days comes through Section 14(1) of the Interpretation Ordinance, because Section 755(3) contains a period of sixty days which is an unbroken series without any intervening exclusion. Thus Section 14(1) of the Interpretation Ordinance does not reckon the day on which the judgment was delivered in the computation of the sixty day period.

As Lord Dunedin observed in *Whiteman v. Stanley* (1910) AC 514 at page 527, “Express enactment shuts the door of further implication”. The express enactment of excluding the day on which the judgment was pronounced, will not permit any other construction or implication. The main application of the principle of *expressum facit cessare tacitum* (what is expressly made (provided for) excludes what is tacit) lies in the so-called principle of *expressio unius est exclusio alterius* (the expression of the one is the exclusion of the other). Expression of an exclusion such as the day of judgment will exclude the inclusion of that day as is found in Section 754(4) of the Civil Procedure Code. It is an ordinary rule of interpretation that “if authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition excludes the doing of the act authorized under other circumstances



than those so defined-*expressio unius est exclusio alterius* -per Willes J. in *North Stafford Steel, Iron and Coal Company (Burslem) Ltd., v. Ward* (1867-68) L.R 3 Ex. 172 at page 177.

If authority is given in Section 755(3) of the Civil Procedure Code, read with Section 14(1) of the Interpretation Ordinance, to exclude the day of the judgment, the computation of the sixty days must be undertaken by that method and none other - see Eveleigh, LJ. in *Felix v. Shiva* (1983) Q.B 82 at page 90.

At this stage it is apposite to allude to precedents of the Court of Appeal such as *Perera v. Perera and another* (1981) 2 SRI. L.R 41 and *Peter Singho v. Costa* (1992) 1 SRI. LR 49 which have held that the provisions in Section 755(3) of the Civil procedure Code are mandatory, and that in computing the sixty days “Only the date on which the judgment was pronounced can be excluded”.

Applying the above the principles I hold that the appeal has been filed within time. The judgment of the District Court was delivered on 27.03.2000 - vide page 170 and Journal Entry No. 65 of 27.03.2000 at page 48 of the brief.

In terms of Section 755(3) of the Civil Procedure Code, read with Section 14(1) of the Interpretation Ordinance, the day of the judgment i.e. 27.03.2000 should be excluded and the sixty day period within which the petition of appeal must be presented to Court would begin on 28.03.2000. The 60<sup>th</sup> day would fall on 26.05.2000. The petition of appeal was presented on the self-same day i.e. 26.05.2000 – vide page 8 of the appeal brief, and Journal Entry No. 67 at page 50 of the brief. It is indubitable that the petition of appeal was filed “within sixty days from the date of the judgment....” as stipulated in Section 755(3) of the Civil Procedure Code. Since the appeal has been timeously filed, this Court would set this case down for argument on merit.

JUDGE OF THE COURT OF APPEAL